

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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<http://www.montgomerycountymd.gov/content/council/boa/board.asp>

Case No. A-6139

PETITION OF JAMES DE MATTIO
(Hearing held June 7, 2006)

OPINION OF THE BOARD
(Effective date of Opinion, September 8, 2006)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for variances from Sections 59-B-6.2, 59-C-3.1(b) and 59-C-1.323(b)(1). The petitioner proposes the construction of: (1) a two-story addition that requires a variance of eight (8) feet as it reduces the sum of both side yards to ten (10) feet; (2) a two-story addition that requires variances of three (3) feet from **each** five (5) foot side lot line setback; (3) a second-story addition that requires a variance of 5.62 feet as it is within 2.38 feet of the left side lot line setback; (4) a second-story addition that requires a variance of 4.45 feet as it within 3.55 feet of the right side lot line setback; (5) a second-story addition that requires a variance of 12.07 feet as it reduces that sum of both side yards to 5.93 feet; (6) a deck that requires a variance of three (3) feet as it is within two (2) feet of the side lot line setback; (7) and the installation of an air conditioning condensing units that requires a variance of six (6) feet as it is within two (2) feet of the side lot line.

The required sum of both side yard setbacks for the two-story addition is eighteen (18) feet; the required side lot line setback for **each** side yard is five (5) feet for the two-story addition; the required left side lot line setback for the second-story addition is eight (8) feet; the required right side lot line setback for the second-story addition is eight (8) feet; the required sum of both side yards for the second-story addition is eighteen (18) feet; the required side lot line setback for the deck is five (5) feet; and the required side lot line setback for the air conditioning condensing units is eight (8) feet.

The subject property is Lot P8, Block 13, Pinecrest Subdivision, located at 6519 Allegheny Avenue, Takoma Park, Maryland, 20912, in the R-60 Zone (Tax Account No. 03174243).

Decision of the Board: Requested variances for a two-story addition **granted**.
Requested variances for a second-story addition **granted**.
Requested variance for a deck **denied**.
Requested variance for an air conditioning units **denied**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes the construction of a two-story addition, a second-story addition, a deck and the installation of air conditioning units to an existing single-family dwelling.
2. The petitioner testified that the existing dwelling is a small, single story house that was built in the 1920s. The petitioner testified that the subject property is an exceptionally small, narrow lot that is 22.66 feet in width and 150 feet in length. The petitioner testified that his lot is 3,399 square feet in size and that the application of the current zoning regulations to the lot results in a buildable envelope that is 4.66 feet in width. The petitioner testified that the subject property is in a section of Takoma Park that was annexed by Montgomery County in 1997. See Exhibit 4 [site plan].
3. The petitioner testified that any new construction on the lot would require a variance and that the proposed construction includes a two-story addition at the rear of the existing house and a second-story addition over the existing first floor footprint. The petitioner testified that the design of the proposed construction will minimize the intrusion into the existing setbacks and that the construction will not increase or expand the existing footprint of the house.
4. The petitioner testified that a deck will be sited in the side yard because it would not require as much maintenance room as the house. In response to questions from the Board, the petitioner testified that the deck will be raised about 3 feet off the ground and that the air conditioning units would be adjacent to the new addition. See Exhibit Nos. 5(a) [left side elevation] and 5(c) [rear/front elevation].
5. The petitioner testified that Exhibit No. 10(c) [real property tax map] shows the current configuration of the subject property. The petitioner testified that the subdivision of Lots 7 and 8 resulted in their current configuration and that the houses on these 2 lots are built very close to each other. The petitioner testified that his lot is 1 of 4 lots on the block with these very narrow dimensions and that most of the neighboring lots are 40 feet in width. The petitioner testified that the neighboring homes and most homes in the neighborhood have second-stories. See Exhibit Nos. 7(a) through 7(c) [photographs].

FINDINGS OF THE BOARD

Based upon the petitioner's binding testimony and the evidence of record, the Board finds that the variances for a deck and an air conditioning condensing unit must be denied. The requested variances do not comply with the applicable standards and requirements set forth in Section 59-G-3.1(a) as follows:

(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.

(d) Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.

The Board finds that the placement of a deck and the air conditioning units within 2 feet of the side lot line would be too close to the shared side yard boundaries and that the deck and the air conditioning units could be sited at another location on the lot that would lessen the impact on the neighboring property and that would not necessitate the need for the requested variances.

The petition does not meet the requirements of Section 59-G-1.3(a) or Section 59-G-1.3(d). Accordingly, the requested variances of: (1) three (3) feet from the required five (5) foot side lot line setback for the construction of a deck is **denied**; and (2) six (6) feet from the required eight (8) foot side lot line setback for the installation of an air conditioning units is **denied**.

FINDINGS OF THE BOARD

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variances for a two-story addition and a second-story addition can be granted. The requested variances comply with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.

The Board finds that the petitioner's property is an exceptionally narrow lot (22.66 feet in a zone where the minimum width is 60'), which is 3,399 square feet in size (in a zone where the minimum lot area is 6,000 square feet). The Board finds that the property is

a severely constrained lot and that its size is 43% below the minimum size required for the R-60 Zone. The Board finds that the application of the required setbacks to the subject property results in a buildable envelope that is 4.66 feet in width.

The Board finds that the construction of the proposed second-story addition will not increase or expand the footprint of the existing dwelling. The Board finds that the variances requested for the two-story addition are necessary because without them, given the extreme narrowness of the lot and a resulting buildable envelope that is a mere 4.66 feet wide, there is no buildable area remaining on the lot, and the strict application of the zoning regulations would result in practical difficulties to and an undue hardship upon the property owner.

(b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.

The Board finds that the variances requested for the construction of a two-story addition and a second-story addition are the minimum reasonably necessary to overcome the hardship imposed by the strict application of the zoning ordinance.

(c) Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.

The Board finds that the proposed construction will continue the residential use of the property and that the variances will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

(d) Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.

The Board finds that the proposed construction will be in harmony with other improvements in the immediate neighborhood and that the variances will not be detrimental to the use and enjoyment of the adjoining and neighboring properties.

Accordingly, the requested variances of: (1) eight (8) feet from the required eighteen (18) foot sum of both side yards requirement for the construction of a two-story addition; (2) three (3) feet from the required eight (8) foot for **each** side lot line setback for the construction of a two-story addition; (3) 5.62 feet from the required eight (8) foot left side lot line setback for the construction of a second-story addition; (4) 4.45 feet from the required eight (8) foot right side lot line setback for the construction of second-story

addition; and (5) 12.07 feet from the required eighteen (18) foot sum of both side yards requirement for the construction of a second-story addition are granted subject to the following conditions:

1. The petitioner shall be bound by all of his testimony and exhibits of record, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 4 and 5(a) through 5(i).

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Caryn L. Hines, seconded by Donna L. Barron, with Angelo M. Caputo, Wendell M. Holloway and Allison Ishihara Fultz, Chair, in agreement, the Board adopted the foregoing Resolution.



Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 8th day of September, 2006.

Katherine Freeman
Executive Director

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.